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No. _____

# IN THE SUPREME COURT OF THE UNITED STATES

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JAFAR POUR JALIL RAYHANI and SIROUSS SADIGHI
*Petitioners,*

v.

UNITED STATES OF AMERICA
*Respondent.*

---

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## PETITION FOR WRIT OF CERTIORARI

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64 pp

## QUESTIONS PRESENTED

1. Whether the transportation of foreign currency from one foreign nation to another foreign nation can be considered an act in furtherance of a conspiracy in violation of 18 U.S.C. §1956, where the funds were neither actually nor attempted to be transported to, from, or through any point in the United States?

2. Whether 18 U.S.C. §1956(f) limits court-created rules which allow for the exercise of extraterritorial jurisdiction over all non-U.S. citizens who personally appear before it?

3. Whether Article III, sec. 2, cl. 3, and the Sixth Amendment of the United States Constitution, and Fed.R.Crim.P. 18 require that the jury make a finding of proper venue where: (a) the defendant requests an instruction on venue; and (b) the alleged conduct extended beyond the district of trial.

## LIST OF PARTIES

JAFAR POUR JALIL RAYHANI, Petitioner

SIROUSS SADIGHI, Petitioner

UNITED STATES OF AMERICA, Respondent.

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## PETITION FOR WRIT OF CERTIORARI

Petitioners Jafar Pour Jalil Rayhani and Sirouss Sadighi respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit affirming the judgment of the court below.

## ORDERS BELOW

The October 26, 1999 order of the U.S. Court of Appeals for the Ninth Circuit affirming Petitioners' convictions and sentences is attached hereto as Appendix A.

The October 29, 1999 order of the U.S. Court of Appeals for the Ninth Circuit granting Mr. Rayhani's motion for leave to file a supplemental brief re the district court's failure to give venue instruction is attached hereto as Appendix B.

The January 3, 2000 order of the U.S. Court of Appeals for the Ninth Circuit denying Petitioners' petition for rehearing and suggestion for rehearing en banc is attached hereto as Appendix C.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

On October 29, 1999, judgment affirming Mr. Rayhani's conviction and sentence was entered by the U.S. Court of Appeals for the Ninth Circuit.

On January 3, 2000, order denying Mr. Rayhani's petition for rehearing and suggestion for rehearing en banc was entered by the U.S. Court of Appeals for the Ninth Circuit.

Notification of the Solicitor General of the United States has been made in accordance with Rule 29.4(b) of this Court.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Article I, § 8, cl.3:

The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among the Several states, and with the Indian Tribes.

United States Constitution, Article III, §. 2, cl. 3

The Trial of all Crimes . . . shall be held in the State where

said Crimes shall have been committed; but when not committed within any States, the Trial shall be at such Place or Places as Congress may by law have directed.

Sixth Amendment, United States Constitution:

In all criminal trials, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and in the district wherein the crime shall have been committed . . .

Federal Rule of Criminal Procedure 18:

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

18 U.S.C. § 1956(a)(2):

Attached hereto as Appendix D.

18 U.S.C. § 1956(c)

Attached hereto as Appendix D.

18 U.S.C. § 1956(f):

There is extraterritorial jurisdiction over the conduct

prohibited by this section if-

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

18 U.S.C. §1956(h)

Attached hereto as Appendix D.

## STATEMENT OF THE CASE

### A. Procedural History

On October 31, 1995, a grand jury indicted Petitioners Rayhani and Sadighi, and five others for money laundering offenses. Petitioners Rayhani and Sadighi were named in Count Two of the indictment and charged with conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h), and Count Twenty-Two seeking foreiture of assets pursuant to 18 U.S.C. § 982(a)(1). Petitioner Sadighi was further charged in Counts 1, 9, 10, 15, and 17 of the Indictment with alleging further violations of 18 U.S.C. § 1956.

On November 13, 1995, Petitioners Sadighi was arraigned before the U.S. District Court for the Central District of California.

On November 20, 1995, Petitioners Rayhani was arraigned before the U.S. District Court for the Central District of California.

On July 1, 1997, the jury found Petitioners Rayhani and Sadighi guilty of all counts alleged.

On July 14, 1998, Petitioner Rayhani was sentenced to a term of 121 months imprisonment, followed by a three-year term of supervised release.

On July 16, 1998, Mr. Sadighi was sentenced to 168 months imprisonment followed by three years of supervised release..

On July 23, 1998, Petitioners timely filed Notices of Appeal from their convictions and sentences.

On November 8, 1999, Petitioners timely filed a joint Petition for Rehearing and Suggestion for Rehearing En Banc.

On January 3, 2000, the U.S Court of Appeals for the Ninth Circuit entered an order denying the joint petition for rehearing and suggestion for rehearing en banc.

## B. Relevant Facts

### (1) Acts Allegedly Conducted in Furtherance of a Conspiracy to Violate 18 U.S.C. § 1956

Petitioner Rayhani is an Iranian citizen who at all times alleged in the indictment was a resident of Istanbul, Turkey. (RT 349-51, 353-54, 428). None of Mr. Rayhani's alleged conduct in this case occurred from within the United States.

From 1992 until January 16, 1993, Petitioner Sadighi, a United States citizen, was residing in Germany. None of Mr. Sadighi's alleged conduct during the aforementioned time period occurred from within the United States.

On March 12, 1992, Petitioner Sadighi was arrested in Madrid by Spanish National Police ("SNP") for failing to declare approximately 25,145,000 Spanish pesetas while traveling from Spain to Germany. (RT 819-22, 830). The Spanish pesetas were seized by Spanish authorities at that time. (RT 819-22, 830) Intercepted telephone conversations between Petitioners Rayhani and Sadighi indicated that Mr. Sadighi was transporting the currency on behalf of Mr. Rayhani. (RT 1846-47).

On December 28, 1992, Spanish National Police in Madrid were investigating Behrouz Oveissi, a suspected drug dealer. Based upon information obtained during their investigation, the SNP searched a hotel room occupied by Helmut and Agnes Villers, a German couple, where they discovered approximately 37,881,000 Spanish pesetas. The Villers' airplane tickets evidenced that they were intending to return to Germany the following day. (RT 676-79, 683-84, 690).

SNP subsequently conducted a search of Oveissi's residence in Madrid and discovered approximately 29,600,00 Spanish pesetas. An officer of the SNP testified that the seized currency was ripped, worn, singed, smelled like drugs and, in his opinion, constituted drug proceeds. (RT 706-08, 710, 736, 765). The Villers and Mr. Oveissi were arrested by the SNP. (RT 695-96, 698).

Following the arrests of the Villers and Oveissi, Petitioner Rayhani, who was located in Turkey, telephonically contacted Petitioner Sadighi, who was located in Germany, and other individuals located in Turkey, Germany, and Spain. During these telephone conversations, Petitioner Rayhani attempted to ascertain the circumstances surrounding the seizures, and discussed plans to

hire an attorney in an attempt to recover the seized funds. (RT 1861-73, 1890-1916, 1920-24).

On January 4, 7, and 10, 1993, law enforcement authorities intercepted a telephone conversations from Petitioner Rayhani, located in Turkey, Ali Reza Abedini, located in Spain, and Behrouz Ghasemi, located in Germany, regarding the transportation of additional Spanish pesetas from Spain to Germany. (RT 1969, 1972, 1980-89, 2008-09, 2015-24).

At an undetermined time in 1992, Petitioner Sadighi hired a courier to transport approximately $150,000 worth of Spanish pesetas from Spain to Germany on behalf of Petitioner Rayhani's son, Hossein Rayhani. (RT 2066-75).

On January 16, 1993, Mr. Sadighi relocated from Germany to Los Angeles, California. (RT 2623).

**(2) Exercise of Extraterritorial Jurisdiction Over Petitioner Rayhani**

At all times alleged in the indictment, Mr. Rayhani resided in Istanbul, Turkey. Mr. Rayhani was not located in the United States at any time relevant to the indictment.

In October, 1995, anticipating the filing of the indictment in this case, DEA agents working in Istanbul, Turkey, began efforts to secure Mr. Rayhani's presence in the Central District of California. Lacking legal authority to extradite pursuant to the U.S. extradition treaty with Turkey, U.S. agents, acting together with Turkish authorities, orchestrated Mr. Rayhani's deportation from Turkey. Upon his expulsion from the country Mr. Rayhani was given to the custody of two DEA agents who flew him to Frankfurt, Germany where he was briefly detained before being transported to Los Angeles, California. (Government's Opposition to Motion to Dismiss Counts Two and Twenty-Two for Lack of Both Subject-Matter and Personal Jurisdiction).

On March 26, 1997, Mr. Rayhani filed a motion to dismiss based upon lack of personal and subject matter jurisdiction.[1]

On April 10, 1997 , the district court denied Mr. Rayhani's motion to dismiss based upon lack of personal and subject matter

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[1] Petitioner Sadighi joined in all motions and pleadings filed by Petitioner Rayhani which are referred to in this Petition.

jurisdiction..

On June 6, 1997, following the presentation of the prosecution's evidence, Mr. Rayhani moved to dismiss pursuant to Fed.R.Crim.P. 29 based inter alia on lack of personal and subject matter jurisdiction. The district court denied the motion.

Following the presentation of evidence at trial, Mr. Rayhani's attorney requested the district court to instruct the jury regarding the exercise of extraterritorial jurisdiction pursuant to the language of 18 U.S.C. ¶ 1956(f). (Defendant Rayhani's Additional Proposed Jury Instructions). The district court denied this requested instruction.

The district court further denied a proposed instruction which would require the jury to find evidence of an overt act in furtherance of the alleged conspiracy. (RT 5372).

In its order affirming Petitioners' conviction and sentence, the Court of Appeals for the Ninth Circuit held that the district court did not err by failing to instruct that the jury must unanimously agree upon at least one overt act committed by at least one defendant in furtherance of the conspiracy in order to convict since, "the language of § 1956(h) is nearly identical to the language of 21 U.S.C. § 846

that the Supreme Court held does not require proof of an overt act in United States v. Shabani, 513 U.S. 10, 15 (1994)." See, Appendix A, at 16-17. The Court of Appeals did not address the merits of Mr. Rayhani's argument that section 1956(f) required proof of an overt act within the United States.

Although the Ninth Circuit held that no proof of an overt act was required in this case, its justification for affirming the district courts' exercise of subject matter jurisdiction was based upon its conclusion that Petitioner Sadighi "engaged in conduct to further the conspiracy in the United States." Appendix A, at 10.

**3. Failure to Instruct Jury on Venue**

On March 26, 1997, Mr. Rayhani filed a pretrial motion to dismiss the indictment for improper venue. In opposition, the government argued that venue was proper in the Central District of California by virtue of the alleged overt acts of Mr. Sadighi in southern California commencing in January, 1993.

On April 10, 1997, the district court denied the motion to dismiss for improper venue.

During trial, the government presented evidence of overt acts

allegedly occurring in furtherance of a global conspiracy to launder monies in Europe, Asia, and the United States.

On June 6, 1997, following the government's presentation of evidence at trial, Mr. Rayhani moved to dismiss the charges pursuant to Fed.R.Crim.P. 29 for lack of venue. The district court denied the motion.

On June 13, 1997, The district court denied Mr. Rayhani request to instruct the jury that, "In Count Two, the Government must prove that at least one overt act in furtherance of the conspiracy was committed by either Defendant Rayhani or Sadighi in the Central District of California."

On February 5, 1999, Petitioners filed their Opening Briefs before the U.S Court of Appeals in which they challenged the district court's failure to instruct the jury on the issue of venue.

On October 5, 1999, oral arguments were heard before the United States Court of Appeals for the Ninth Circuit. At the commencement of arguments, counsel for Mr. Rayhani indicated that he would like to address the issue of the district court's failure to instruct the jury on the issue of venue. Judge Rymer indicated that

she did not believe counsel had raised this issue in his opening brief and, therefore, that counsel should not argue this matter orally.

On October 8, 1999, Petitioner Rayhani filed a Motion for Leave to File Supplemental Brief Re: District Court's Failure to Give Venue Instruction in which counsel for Petitioner Rayhani argued that he was improperly denied the opportunity to present oral arguments on this subject before the Ninth Circuit Court of Appeals. Petitioner Rayhani concurrently filed a Supplemental Brief Re: District Court's Failure to Give Venue Instruction.

On October 26, 1999, the U.S. Court of Appeals entered its judgment affirming Petitioners conviction and sentence. Appendix A. The Court of Appeals did not address Mr. Rayhani's argument that the district court's failure to instruct the jury on the issue of venue constituted reversible error. Although the jury was not required to so find, the Court of Appeals concluded that "venue was proper in the Central District of California because Sadighi acted to further both conspiracies while in Los Angeles."

On October 29, 1999, the U.S. Court of Appeals for the Ninth Circuit entered an order granting Petitioner Rayhani's motion

to file a supplemental brief re the district court's failure to give a venue instruction. Appendix B.

## REASONS FOR GRANTING THE WRIT

### A. The Petitioner Raises Important Questions as to the Scope of Congress' Power to Regulate Commerce

Through its decision in this case, the Court of Appeals for the Ninth Circuit has held that the transportation of foreign currency from one foreign nation to another foreign nation can constitute an act in furtherance of a conspiracy to violate 18 U.S.C. § 1956, absent any allegation or proof that the funds had any actual, or intended contact with the United States. The consequences of such a ruling on traditional notions of national sovereignty and on international commerce are profound.

The Court of Appeals' ruling effectively eliminates all limitations on Congress' powers to regulate commerce as outlined by Article I, § 8, cl.3 of the U.S. Constitution. Through its holding, the Ninth Circuit has improvidently extended Congress' power to regulate commerce not only with foreign nations, but also the commerce between foreign nations.

By its express terms, 18 U.S.C. § 1956(a)(2) only prohibits the transportation, transmission, or transfer of illicit monetary instruments or funds "from a place in the United States to or though a place outside the United States or to a place in the United States from or through a place outside the United States." 18 U.S.C. § 1956(a)(2). Section 1956(a)(1) further prohibits certain "financial transactions" having an effect on interstate commerce. See, 18 U.S.C. § 1956(a)(1), (c). Through these statutory provisions, Congress expressly recognized the constitutional limitations on its power. This Court has similarly recognized that Congress may only regulate conduct having a substantial effect on interstate commerce. See, e.g., United States v. Lopez, 514 U.S. 549 (1995).

Because there was neither any allegation, nor any proof, that the funds transported wholly within Europe had any actual or intended contacts with the United States, the conduct in question cannot be regulated by Congress. Consequently, these transactions cannot be considered as acts in furtherance of a conspiracy pursuant to 18 U.S.C. § 1956(h).

By presenting evidence that the transportation of funds from

Spain to Germany constituted acts in furtherance of the charged conspiracy, the government necessarily presented evidence at variance with the Count charged in the indictment. Moreover, the court improperly included the value of these foreign transactions in sentencing the Petitioners, although it had no jurisdiction to consider this conduct under either the Constitution or section 1956.

**B. The Lower Court's Ruling Creates a Conflict Among the Circuits**

The Ninth Circuit's ruling in this matter conflicts with United States v. Kramer, 73 F.3d 1067 (11th Cir. 1996) in which the Eleventh Circuit reversed the conviction based upon the transportation of funds from Switzerland to Luxembourg. The Kramer court held as follows:

> The jury found that Gilbert was involved in only one transaction, and the transaction was totally outside of this country. Because this transaction is separate from the one originating in the United States and because money laundering is not a continuing offense, Gilbert's conviction cannot be upheld on this basis.

Petitioners contend that because the transactions here at issue occurred entirely outside of the United States, they could not be considered acts in furtherance of a conspiracy to violate 18 U.S.C. § 1956. The Ninth Circuit attempted to distinguish Kramer from the instant case as follows:

> "That these particular monies were laundered wholly outside the United States does not disqualify them from being included, because Rayhani and Sadighi were not convicted of substantive money laundering. Their reliance upon [Kramer] is misplaced, for unlike the single substantive laundering transaction at issue there, Rayhani and Sadighi's 'offense of conviction' in Count Two...was *conspiracy* to launder monies in order to promote drug trafficking..." (Emphasis added)

The distinction recognized by the Court of Appeals would be significant had there been any proof that a purpose of the conspiracy was to transfer these funds to the United States. However, no such proof, nor even any allegation, existed. Thus, the Court of Appeals ruling holds concedes that the substantive

act of transporting funds from Spain to Germany would not constitute a violation of section 1956, but nonetheless claims that a mere agreement to transport such funds somehow does violate the statute. This ruling is nonsensical. Moreover, it is unauthorized by the language of section 1956(h), and the creates a conflict in principle between the circuits which should be resolved by this Court.

**C. The Petitioner Raises Important Questions as to the Exercise of Extraterritorial Jurisdiction over Foreign Citizens**

This Court has long recognized that "federal courts are courts of limited jurisdiction marked out by Congress." Aldinger v. Howard, 427 U.S. 1 (1976). This Court has further affirmed the notion that "federal courts should be wary of extending court-created doctrines of jurisdiction to reach parties who are expressly excluded from . . . federal jurisdiction." Id., at 6. Despite this authority, the Court of Appeals has ruled that the district court properly exercised extraterritorial jurisdiction over Mr. Rayhani based upon a court-created doctrine in spite of statutory language

which may have expressly precluded Mr. Rayhani from federal jurisdiction.

18 U.S.C. § 1956(f) provides for the extraterritorial application of the money laundering statute over non-United States citizens where (1) the conduct occurs in part in the United States, and (2) the transaction or series of related transactions involves funds of a value exceeding $10,000. Mr. Rayhani is an Iranian national who was located in Turkey throughout the time period alleged in the indictment. Based upon the foregoing, Petitioner Rayhani requested a jury instruction which would require the jury to find the occurrence of an overt act in the United States in order to exercise jurisdiction over him. The district court denied the requested instruction.

On appeal, Petitioners challenged both the exercise of personal jurisdiction and the district court's failure to instruct the jury on this issue. The Court of Appeals rejected Petitioners' arguments citing a court-created doctrine which holds that the "court has exclusive personal jurisdiction over any party who appears before it, regardless of how that appearance was affected.

See United States v. Warren, 610 F.2d 680, 684 n.8 (9th Cir. 1980)." Apppendix A at 10.

This Court has previously recognized in the context of state rights that "any attempt 'directly' to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed inherent limits of State's power." Healy v. Beer Institute, Inc., 491 U.S. 324, 337 (1989), citing, Shaffer v. Heitner, 433 U.S. 186 (1977). The same can be said with respect to the exercise of extraterritorial jurisdiction in the international context.

Mr. Rayhani, an Iranian citizen, was residing in Turkey at all times relevant to this indictment. The United States went to extraordinary, and unlawful, extents to orchestrate his presence on the instant charge. Circumventing the applicable extradition treaty, Mr. Rayhani was effectively kidnapped by U.S. DEA agents, flown to Frankfurt, Germany and then boarded on a plane to the United States to stand trial. (Government's Opposition to Defendant Rayhani's Motion to Dismiss for lack of Personal and Subject Matter Jurisdiction).

Undoubtedly, Congress did not intend for government agents to routinely sequester foreign nationals living abroad in the name of enforcing the money laundering statute. This conclusion is supported by the fact that Congress enacted regulations to allow the exercise of extraterritorial jurisdiction over a non-U.S. citizens only in those instances where the prohibited conduct occurred in part in the United States. 18 U.S.C. § 1956(f). Given this language, the jury should have been instructed of its duty to find an overt act within the United States.

The exercise of personal jurisdiction over foreign nationals under the facts of this case could have a highly adverse impact on this country's diplomatic relations with foreign nations and, therefore should be addressed by this Court. See, McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10 (1963) (noting the "international complexion" arising from exercise of jurisdiction over foreign parties as "compelling justification for prompt judicial resolution," and considering "potential embarrassment in foreign affairs" in reaching decision). One need only imagine the political uproar that would ensue in

this country had the Iranian government arrested an American citizen outside its own borders and tried him under circumstances similar to this case.

Cognizant of these considerations, Congress expressly limited the reach of extraterritorial jurisdiction under this statute. It is not the role of the federal courts, whose jurisdiction was created by Congress, to supplant the legislature's unambiguous language.

**D. This Court Should Exercise its Supervisory Powers to Review the District Court's Failure to Instruct the Jury on the Issue of Venue.**

Venue is not a mere technicality. The defendant's right to proper venue has deep constitutional roots in Article III, § 2, cl. 3 and in the Sixth Amendment, which requires trial by "a jury of the state and district in which the crime was committed." See, United States v. Cabrales, __U.S.__ 118 S.Ct. 1772 (1998). These requirements are further codified in Fed.R.Crim.P 18. Failure to treat venue rights seriously not only may impose unfairness and hardship on the accused, but also encourage forum-shopping by

federal prosecutors. United States v. Johnson, 323 U.S. 273, 275 (1944). These factors were especially significant in this case considering that Mr. Rayhani was forcibly brought halfway around the world from Turkey to the district of trial.

Venue is a question of fact which ordinarily must be decided by the jury. United States v. Romero, 150 F.3d 821, 826 (8th Cir. 1998); United States v. Miller, 111 F.3d 747, 749 (10th Cir. 1997) at 749; United States v. Winship, 724 F.2d 1116, 1124 (5th Cir. 1984); United States v. Gillette, 189 F.2d 449, 452 (2d Cir. 1951). Failure to instruct the jury on venue when requested to do so is error. Miller, at 750; United States v. Grammatikos, 633 F.2d 1013, 1022 (2d Cir. 1980). Courts have noted that there are significant dangers of abuse if the jury is not required to make a finding on the issue of venue as this would allow the government to obtain an indictment for conspiracy in any district simply by alleging that one act, which need never be proved, was committed in that district. See, Miller, at 754.

Mr. Rayhani proposed a jury instruction which would have required the jury to find that an overt act in furtherance of the

conspiracy was committed within the Central District of California. The district court denied Mr. Rayhani's requested instruction.

On Appeal, the Ninth Circuit failed to address Mr. Rayhani's arguments regarding instructing the jury on venue altogether. Nonetheless, the Court of Appeals concluded that venue was proper claiming Petitioner Sadighi acted to further the alleged conspiracy while in Los Angeles. In reaching this conclusion, the Court of Appeals improperly made a finding of fact which was never decided by the jury.

Apart from overstepping its judicial role, the Court of Appeals decision is unsupported by the evidence presented at trial. The only evidence presented of overt acts in the Central District of California with respect to Count Two were conversations between Mr. Rayhani, Located in Turkey, and Mr. Sadighi, located in Los Angeles, regarding the status of legal proceedings in Spain seeking to secure the lawful release of seized Spanish pesetas. As a matter of law, these conversations cannot be considered as act in furtherance of the alleged conspiracy. If a

conspiracy to launder these funds did, at one time exist, the object of such a conspiracy was necessarily defeated upon seizure of the funds. See, United States v. Cruz, 127 F.2d 791 (9th Cir. 1997); United States v. Castro, 972 F.2d 1107, 1112 (9th Cir. 1992). Moreover, seeking legal redress to release these funds in Spain insufficiently related to the alleged criminal conduct for it to be legally considered an act in furtherance of the alleged conspiracy. See, Grunewald v. United States, 353 U.S. 391, 406 (1957).

The failure to instruct the jury on venue, when requested, is reversible error unless it is proven beyond a reasonable doubt that the jury's guilty verdict on the charged offense necessarily incorporates a finding of proper venue. Miller, at 751. Such would be the case if, for example, all of the overt acts alleged in the indictment were alleged to have occurred within the trial jurisdiction. Id.

In the instant case, the government could not demonstrate beyond a reasonable doubt that the jury's verdict necessarily incorporated a finding of proper venue. The alleged conduct in furtherance of the charged conspiracy extended far beyond the

Central District of California. As a result, the jury could have found the elements of the charged offense without finding the factual predicate for proper venue in the trial jurisdiction. Indeed, there was little conduct occurring within the trial jurisdiction which could possibly been considered to be in furtherance of the alleged conspiracy.

## CONCLUSION

Based upon all of the foregoing, this Court should exercise its supervisory role in order to review the district court's failure to instruct the jury on the issue of venue.

Dated: March 30, 2000

Respectfully submitted,

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Jafar Pour Jalil Rayhani

PAUL L. HOFFMAN
Attorney for Petitioner
Sirouss Sadighi

NOT FOR PUBLICATION Filed Oct 26 1999

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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|---|---|
| UNITED STATES OF AMERICA, | ) No. 98-50442 |
| | ) |
| Plaintiff - Appellee, | )D.C.No.CR-95-00984-JGD-3 |
| | ) |
| v. | ) |
| | ) MEMORANDUM |
| SIROUSS SADIGHI | ) |
| | ) |
| Defendant - Appellant | ) |

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|---|---|
| UNITED STATES OF AMERICA, | ) No. 98-50468 |
| | ) |
| Plaintiff - Appellee, | )D.C.No.CR-95-00984-JGD-1 |
| | ) |
| v. | ) |
| | ) MEMORANDUM |
| JAFAR POUR JALIL RAYHANI | ) |
| | ) |
| Defendant - Appellant | ) |

Appeal from the United States District Court
for the Central District of California
John G. Davies, District Judge, Presiding

Argued and Submitted October 5, 1999
Pasadena, California

Before: RYMER and McKEOWN, Circuit Judges, and SHEA,*** District Judge.

Sirouss Sadighi appeals his conviction and 168-month sentence following a jury trial for conspiracy to launder monetary instruments and four counts of laundering monetary instruments, in violation of 18 U.S.C. §§ 1956(h), 1956(a)(3). Jafar Pour Jalil Rayhani appeals his conviction and 121-month sentence following a jury trial for conspiracy to launder monetary instruments, in violation of 18 U.S.C. § 1956(h). We have jurisdiction, 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and we affirm.

I.

Rayhani and Sadighi contend that the indictment was duplicitous, but this issue is waived because they failed to raise it in a Fed.R.Crim.P. 12(b)(2) motion before trial. See United States v. Gordon, 844 F.2d 1397, 1400 (9th Cir. 1988) (appellants "waived an objection to the *form* of the indictment and their right to force the

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*** Honorable Edward F. Shea, United States District Judge for the Eastern District of Washington, sitting by designation.

government to divide Count I into two separate conspiracy counts" because they failed to object before trial); accord United States v. Savage, 67 F.3d 1435, 1439 (9th Cir. 1995) (same). We therefore decline to consider it.

## II.

Rayhani and Sadighi argue that the evidence was insufficient to prove a single international money laundering conspiracy as charged in Count Two in that at best it showed multiple unrelated conspiracies or a separate conspiracy as to each individual transaction; Sadighi also contends that the evidence was insufficient to demonstrate he was party to a single domestic money laundering conspiracy as charged in Count One. Sufficient evidence to support a conviction exists if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979).

A conspiracy requires (1) an agreement to accomplish an illegal objective and (2) intent to commit the underlying substantive

offense.[1] See

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[1] To establish a transaction money laundering conspiracy under § 1956(h) and (a)(1), the government must prove beyond a reasonable doubt that a defendant conspired to conduct "a financial transaction which involved the proceeds of unlawful activity, that he knew the property involved was proceeds of some form of specified unlawful activity, and that he *either* (1) 'intend[ed] to promote the carrying on of specified unlawful activity' (18 U.S.C. § 1956(a)(1)(A)(I)); *or* (2) knew that the transaction was designed in whole or in part 'to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity' (18 U.S.C. § 1956(a)(1) (B)(I))." United States v. Montoya, 945 F.2d 1068, 1076 (9th Cir. 1991). "[S]ubsections (A)(I) and (B)(I) are set forth in the disjunctive." Id.

To establish a transportation money laundering conspiracy under § 1956(h) and (a)(2), the government must prove beyond a reasonable doubt that a defendant conspired to "transport[], transmit[], or

United States v. Yossunthorn, 16.7 F.3d 1267, 1270 (9th Cir. 1999). "To establish the existence of a single conspiracy, rather than multiple conspiracies, the government must prove that an overall agreement existed among the conspirators." United States v. Bibbero, 749 F.2d 581,587 (9th Cir. 1984). Such an agreement "may be inferred from the defendants' acts pursuant to the scheme, or other circumstantial evidence." Id. In assessing whether a single conspiracy has been proved, we consider "the nature of the scheme; the identity of the

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transfer[], or attempt[] to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States - (A) with the intent to promote the carrying on of specified unlawful activity; or (B) knowing that the monetary instrument or funds . . . represent the proceeds of some form of unlawful activity and knowing that such transportation . . . is designed . . . (I) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity." 18 U.S.C. § 1956(a)(2); see also Savage, 67 F.3d at 1440.

participants; the quality, frequency, and duration of each conspirator's transactions; and the commonality of time and goals." Id. "The evidence need not be such that it excludes every hypothesis but that of a single conspiracy; rather, it is enough that the evidence adequately supports a finding that a single conspiracy exists." United States v. Kenny, 645 F.2d 1323, 1335 (9th Cir. 1981) (citations omitted).

**A.**

The jury could rationally find that both Rayhani and Sadighi were involved in a single international (European-based) money laundering conspiracy designed to promote drug trafficking as charged in Count Two.[2] Sadighi traveled to Spain in March 1992 to

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[2] Because both Rayhani and Sadighi were ultimately sentenced for conspiring to engage in money laundering with the intent to promote drug trafficking (which carries a higher base offense level than conspiracy to engage in money laundering with the intent to conceal or disguise), we examine whether the evidence was sufficient to convict them of conspiring to commit "promotion" money laundering. See

attempt to smuggle approximately $219,000 for Rayhani to Germany; Sadighi worked closely with Rayhani from 1993 to 1995 to recover the $587,700 seized by Spanish authorities from Villers and Ovessi - monies which Officer Rodriguez testified were drug proceeds because they were ripped, worn, singed, smelled like drugs and were in small denominations; and Sadighi and Rayhani discussed depositing $50,000 in a New York bank account from one of Rayhani's Turkish clients, a suspected drug trafficker. In late 1992, Sadighi made arrangements to transport $150,000 from Spain to Germany at Rayhani's request for his son, Hossein. Also in late 1992, Rayhani deposited $97,339 and $64,830 into an American Express Bank account under the name "Sawan Exchange" (a money exchange house located in the United Arab Emirates). Faulconer testified that it was very common for money launderers to use "pooling accounts" like the one established for Sawan Exchange in order to commingle (and thereby conceal) the source of the funds.

The evidence shows that both Rayhani and Sadighi knew that these monies were the proceeds of illicit narcotics sales. It includes

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U.S.S.G. § 2S1.1.

transcripts of encoded conversations between Rayhani and Sadighi discussing the smuggling of "black tar" heroin; evidence that Rayhani personally brokered numerous drugs sales between the Rigis and other drug traffickers; and evidence that on three occasions Rayhani himself sold heroin to Aksoy and laundered drug proceeds for him, charging a 7% commission.

This evidence shows a scheme that was singular in nature - to facilitate and promote drug trafficking by Rayhani and his various European and Asian clients by laundering the proceeds from narcotics sales. The identity of the participants remained relatively consistent throughout with Rayhani, Sadighi, Amoui-Pour and Haji Gholam at the conspiracy's core, with peripheral involvement by Abedini, Rahimi, Ghasemi, Rezapour and Aksoy. And Rayhani and Sadighi had repeated contact over the three-year life of the conspiracy (prior to Rayhani's arrest) showing that both were heavily involved in accomplishing the conspiracy's criminal goals. For example, at Rayhani's behest, Sadighi was intricately involved in securing the release of the seized Spanish drug monies; he attempted to smuggle money for Rayhani himself in March 1992; between 1992 and 1993

he bought thirty-eight airplane tickets for third parties (some of whom who served as couriers for Rayhani's funds); and the two discussed not only money movement but also drug sales and smuggling.

Based on this evidence the jury could rationally convict both Rayhani and Sadighi of conspiring in a single conspiracy under Bibbero to engage in money laundering with an intent to promote felonious controlled substance trafficking in violation of § 1956(h), (a)(1) and (a)(2).

**B.**

The jury could also have rationally concluded that Sadighi was party to a separate, single Los Angeles-based money laundering conspiracy primarily involving Sadighi, Amoui-Pour, Kazerouni and Zarrabi. The evidence demonstrated that from 1993 to 1995 Sadighi delivered sums of currency in amounts of $10,000 to $120,000 at a time, which he knew were derived from narcotics trafficking, to Kazerouni and MGM Marwex in Encino, where he taught Kazerouni how to launder the proceeds. At Sadighi's direction, Kazerouni sent these monies to Amoui-Pour in Germany for eventual transfer to

Dubai. Furthermore, from March through May 1994, Sadighi laundered a total of $168,700 on four occasions on behalf of Sobhi, an undercover DEA informant, after being told that the proceeds were international drug monies.[3]

## III.

Rayhani and Sadighi challenge the district court's subject

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[3] Sadighi's contention that he could not be convicted of conspiring with Sobhi, a government agent, fails in light of the fact that § 1956(a)(3) expressly criminalizes the laundering of monies "represented to be the proceeds of specified unlawful activity . . . by another person at the direction of . . . a Federal official." For this reason a Sears instruction, see Sears v. United States, 343 F.2d 139, 142 (5th Cir. 1965), was neither appropriate nor necessary. In any event, Sadighi's dealings went well beyond Sobhi, as they also included numerous wire transfers to Amoui-Pour in Germany and money laundering instructions to Kazerouni.

matter jurisdiction, personal jurisdiction and venue. Each challenge is unavailing.

First, the district court had personal jurisdiction over Rayhani and Sadighi because both men appeared before the court. See United States v. Warren, 610 F.2d 680, 684 n.8 (9th Cir. 1980) (holding that "court has exclusive personal jurisdiction over any party who appears before it, regardless of how that appearance was affected").

Second, it had subject matter jurisdiction because Sadighi is a United States citizen living in Los Angeles, and as Rayhani's co-conspirator (thus making Rayhani liable for all of his conspiratorial acts) he engaged in conduct to further the conspiracy in the United States. See 18 U.S.C. § 1956(f). The government also proved beyond a reasonable doubt that the "series of related transactions" which were the objects of the conspiracy involved "funds or monetary instruments of a value exceeding $ 10,000." Thus, § 1956(f)'s statutory requirements for "'extraterritorial jurisdiction over the conduct prohibited by [§ 195 6]" were satisfied.

The United States does not lack jurisdiction to prosecute the conspiracy charged in Count Two merely because some of the

underlying conduct occurred overseas. The government has the power to prosecute every member of a conspiracy that takes place in United States territory, even those conspirators who never entered the United States. See United States v. Correa-Negron, 462 F.2d 613, 614 (9th Cir.1972). Here, the government proved that both money laundering conspiracies affected American interstate and foreign commerce. Several overt acts performed by Rayhani and Sadighi in furtherance of the international conspiracy occurred in the United States, including their several telephone conversations while Sadighi was living in Los Angeles; Rayhani's wire transfers to New York banks; and Sadighi's transportation of funds and materials into and out of the United States. Because these acts occurred in the United States, involved United States financial institutions, see § 1956(c)(4)(B), and affected interstate or foreign commerce in an amount greater than $ 10,000, the district court had subject matter jurisdiction over the conspiracy (and hence the conspirators) under 18 U.S.C. § 1956(f).

Finally, venue was proper in the Central District of California because Sadighi acted to further both conspiracies while in Los

Angeles. See United States v. Corona, 34 F.3d 876, 879 (9th Cir. 1994) (proper venue for conspiracy is a district in which defendant or co-conspirator committed an overt act); United States v. Meyers, 847 F.2d 1408, 1411 (9th Cir. 1988) (same).

## IV.

Rayhani and Sadighi argue that the court erred in refusing to give a "multiple conspiracy" instruction, in giving an inadequate "unanimity" instruction, and in improperly refusing to give an "overt act" instruction. In reviewing jury instructions for an abuse of discretion, the relevant inquiry is whether the instructions as a whole are misleading or inadequate to guide the jury's deliberation. See United States v. Moore, 109 F.3d 1456, 1465 (9th Cir.) (en banc), cert. denied, 118 S. Ct. 108 (1997). The instructions must be viewed in the context of the overall charge, not in isolation. See United States v. Harrison, 34 F.3d 886, 889 (9th Cir. 1994).

### A.

The district court did not abuse its discretion in refusing Rayhani's proposed "multiple conspiracies" jury instruction because there was no factual basis to support an inference of the existence of

multiple conspiracies. To justify reversal for a failure to give such an instruction, a defendant must demonstrate two things: that "the proof at trial indicates that a jury could reasonably conclude that some of the defendants were only involved in separate conspiracies unrelated to the overall conspiracy charged in the indictment, see United States v. Anguiano, 873 F.2d 1314, 1317 (9th Cir. 1989); and that the failure to give a multiple conspiracies instruction resulted in substantial prejudice. See United States v. Loya, 807 F.2d 1483, 1492-93 (9th Cir. 1987).

However, as we have explained, all of the Bibbero factors militate in favor of finding two (and only two) distinct conspiracies - one, the "Euro-American" conspiracy charged in Count Two among Rayhani, Sadighi and others (including Rahimi, Ghasemi, Rezapour, Aksoy , Amoui-Pour and Haji Gholam) to launder the drug trafficking proceeds of Rayhani and his European and Asian. clients; and the other, the "Los Angeles-based" conspiracy charged in Count One, principally involving Sadighi, Amoui-Pour, Kazerouni, Zarrabi, Sepanlou and Ghaffari, to launder monies out of Amoui-Pour's MGM Marwex International, Ltd. branch in Encino. Neither Rayhani nor

Sadighi points to specific evidence of separate agreements or purposes which could give rise to an inference of multiple, independent conspiracies. See United States v. Shabani, 48 F.3d 401, 403 (9th Cir. 1995) (noting, on remand from Supreme Court, that "the general test for a single conspiracy contemplates the existence of sub-agreements or subgroups."). United States v. Payseno, 782 F.2d 832 (9th Cir. 1986), upon which Rayhani relies, is a "unanimity instruction" case and provides no support for his claim here, and this case differs from Kotteakos v. United States, 328 U.S. 750 (1946) because in Kotteakos there was abundant evidence of the existence of multiple conspiracies. By the same token, it is well established that a single conspiracy may have multiple criminal objects. See e.g., United States v. Treiber, 84 F.3d 1549, 1560 (9th Cir. 1996). Therefore, Sadighi's view that each transaction must legally be charged as a separate conspiracy is misplaced and affords no basis for a multiple conspiracy instruction.

**B.**

A specific unanimity instruction is necessary where (1) the jury indicates in some manner that it is confused regarding the nature

of a charged conspiracy, (2) the indictment is sufficiently broad and ambiguous to engender juror confusion, or (3) the evidence is sufficiently factually complex to indicate that juror confusion may occur. See Anguiano, 873 F.2d at 1319-20.

Each conspiracy count (Counts One and Two) charges four different criminal objects of the money laundering scheme. In addition to the usual unanimity instruction, the district court instructed the jury that as to each of the two conspiracy counts it "must find that there was a plan to commit *at least one of the crimes* alleged in the indictment *as an object of the conspiracy* with all of you agreeing as to the particular crime which the conspirators agreed to commit." The court then proceeded to instruct on the elements of each specific criminal object. Thus, the jury was told that to find Rayhani or Sadighi guilty of criminal conspiracy they must agree unanimously that there was a plan to commit at least one criminal object of each charged conspiracy with everyone "agreeing as to the particular crime [i.e., one of the four objects] which the conspirators agreed to commit." We have held that a similar instruction given in similar circumstances is adequate, see United States v. Friedman, 445 F.2d

1076, 1078-79, 1084 (9th Cir. 1971), and we see no inadequacy in the instructions given here.

In any event, the supplemental unanimity instruction proposed by Rayhani was itself improper, since there is no requirement that in order to convict a defendant of conspiracy, the government needs to prove beyond a reasonable doubt that the co-conspirators employed or engaged in "the same means or method" to accomplish the conspiracy's criminal objects. This instruction would have required the government to prove something (an agreement as to "means or method" in addition to an agreement as to criminal object) that it has no obligation to prove, and was correctly refused.

Sadighi advances the same argument with respect to instructions on the substantive money laundering crimes, but he agreed to these instructions at trial so our review is for plain error. The court instructed on the necessary elements of money laundering in violation of § 1956(a)(3)(A) in Instruction Nos. 36-37, and in violation of § 1956 (a)(3)(B) (the substantive crime) in Instruction Nos. 38-39. In each the court instructed that the jury must unanimously agree that one or more of the objectives charged was

proved beyond a reasonable doubt. In doing so it did not plainly err.

C.

Nor did the court err by failing to instruct that the jury must unanimously agree upon at least one overt act committed by at least one defendant in furtherance of the conspiracy in order to convict, as the language of § 1956(h) is nearly identical to the language of 21 U.S.C. § 846 that the Supreme Court held does not require proof of an overt act in United States v. Shabani, 513 U.S. 10, 15 (1994).

V.

Rayhani and Sadighi contest the district court's determination of their base offense levels; enhancement for role in the offenses; and inclusion of monies laundered wholly outside the United States in the calculation of total monies laundered. Sadighi further faults the court's decision to hold him accountable for monies laundered by his co-conspirators in Los Angeles; and its inclusion of the monies he laundered for Sobhi, the government's undercover informant. We review legality of a Guidelines sentence de novo, see United States v. Garcia, 112 F.3d 395, 397 (9th Cir. 1997), and factual findings for clear error, see United States v. Barnes, 125 F.3d 1287, 1290 (9th

Cir. 1997) (amount of loss); United States v. Parrilla, 114 F.3d 124, 126 (9th Cir. 1997) (sentencing entrapment).

**A.**

The district court properly calculated Rayhani and Sadighi's base offense levels under U.S.S.G. § 2S1.1(a)(1). When sentencing a defendant convicted of conspiracy under the Sentencing Guidelines, the district court must utilize the base offense level for the substantive offense, "plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty." See U.S.S.G. § 2X1.1(a). In doing so, the sentencing court is authorized under U.S.S.G. § 1B1.2(d) to "determine of which conspiracy objects the defendant was guilty" where a defendant is found guilty by a general verdict of a conspiracy allegedly having multiple criminal objects. United States v. Jackson, 167 F.3d 1280, 1283 (9th Cir. 1999). The district court found that both Rayhani and Sadighi knew the source of the proceeds they laundered and also intended to promote drug trafficking by their involvement in the Count Two conspiracy, in violation of §§ 1956(h) and 1956(a)(1)(A)(I). This finding is supported by sufficient evidence,

so the district court did not clearly err in setting Rayhani and Sadighi's base offense levels at 23 pursuant to U.S.S.G. § 2S1. 1(a)(1).

**B.**

In determining a defendant's role in the offense pursuant to U.S.S.G. § 3B 1. 1 (a) the court is to focus "on all aspects of relevant conduct and not merely the defendant's role in the counts of conviction." We are not firmly convinced that Rayhani and Sadighi were not organizers or leaders of extensive criminal activity. There were at least six criminally responsible participants involved in Count One (Sadighi, Zarrabi, Kazerouni, Ghaffari, Amoui-Pour, and MGM Marwex), and many more than five in Count Two. Nor was the§3B1.1(a) enhancement for Sadighi unwarranted given that he supervised and taught Kazerouni how to launder monies at MGM Marwex in Encino, laundered large sums of money himself, and purchased plane tickets and made accommodations for Rayhani's European couriers.

**C.**

Likewise, we are not firmly convinced that the seized Spanish

monies were not laundered during the commission of the "international" conspiracy (and thus were not "relevant conduct") for which both Rayhani and Sadighi were convicted. See U.S.S.G. § 1B1.3(a)(1)(B). That these funds were laundered in furtherance of the conspiracy was, without question, reasonably foreseeable to both Rayhani (who engineered the entire Spanish operation) and Sadighi (who assisted Rayhani for almost three years in recovering the seized funds).

That these particular monies were laundered wholly outside the United States does not disqualify them from being included, because Rayhani and Sadighi were not convicted of substantive money laundering. Their reliance upon United States v. Kramer, 73 F.3d 1067 (11th Cir. 1996), is misplaced, for unlike the single substantive laundering transaction at issue there, Rayhani and Sadighi's "offense

of conviction" in Count Two (to which the Spanish laundering was found relevant) was *conspiracy* to launder monies in order to promote drug trafficking (by Rayhani and others) and to conceal and disguise the source of the drug proceeds. Rayhani and Sadighi's

attempted laundering of - and their subsequent efforts to recover - the seized Spanish monies was an integral part of that conspiracy. Therefore these funds were properly included in calculating the "value of the funds" laundered.

**D.**

Monies laundered by po-conspirators Kazerouni and Zarrabi were also properly included. See U.S.S.G. § 1B1.3(a)(1)(B). The district court found that Sadighi taught Kazerouni how to launder money, and that Sadighi also had numerous dealings and a very close relationship with Zarrabi at MGM Marwex. Nothing that Sadighi argues indicates that the court clearly erred in these findings, which are sufficient to hold him accountable for Zarrabi's laundering activities.

**E.**

Finally, we agree with the district court that the government did not commit "sentencing entrapment" by using the "sting" monies Sadighi believed he was laundering on Sobhi's behalf. To succeed on a sentencing entrapment claim, a defendant must prove that he lacked predisposition to commit the greater offense, see Parrilla, 114 F.3d at

127, and that he had neither the intent nor the resources to perform the greater offense, see United States v. Naranjo, 52 F.3d 245, 250 (9th Cir. 1995). Sadighi failed to do so. The evidence showed that Sadighi was involved in an ongoing money laundering scheme for at-least three years, and that he had both the resources and the inclination to launder monies illegally well before he met Sobhi in early 1994. Sadighi began working with Zarrabi, Kazerouni and Ghaffari at Amoui-Pour's Encino branch of MGM Marwex in early 1993 and began laundering monies there almost immediately. Prior to that, he had laundered money for Rayhani in Europe. Thus the district court was well within its discretion to hold Sadighi accountable for the $168,700 he laundered for Sobhi.

AFFIRMED.

Filed Oct 29 1999

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| UNITED STATES OF AMERICA, | ) No. 98-50442 |
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| Plaintiff - Appellee, | )D.C.No.CR-95-00984-JGD-3 |
| | ) |
| - vi. | ) |
| | ) ORDER |
| SIROUSS SADIGHI | ) |
| | ) |
| Defendant - Appellant | ) |

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| UNITED STATES OF AMERICA, | ) No. 98-50468 |
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| Plaintiff - Appellee, | )D.C.No.CR-95-00984-JGD-1 |
| | ) |
| v. | ) |
| | ) |
| JAFAR POUR JALIL RAYHANI | ) |
| | ) |
| Defendant - Appellant | ) |

Before: RYMER and McKEOWN, Circuit Judges, and SHEA,[4]

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[4] Hon. Ed Shea, U.S. District Judge for the Eastern District of Washington, sitting by designation.

District Judge.

Appellant Rayhani's motion for leave to file supplemental brief re the district court's failure to give venue instruction is GRANTED. The supplemental brief received on October 12, 1999 shall be deemed filed.

Filed Jan. 3, 2000

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| JAFAR POUR JALIL RAYHANI | ) |
| | ) |
| Defendant - Appellant | ) |

Before: RYMER and McKEOWN, Circuit Judges, and SHEA,[5]

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[5] Hon. Ed Shea, U.S. District Judge for the Eastern District of Washington, sitting by designation.

District Judge.

The panel has unanimously voted to deny the joint petition for rehearing. Judges Rymer and McKeown have voted to deny the petition for rehearing en banc and Judge Shea so recommends.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed.R.App.P.35.

The joint petition for rehearing and petition for rehearing en banc are DENIED.

**18 U.S.C. §1956(a)(2)**:

"(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States --

A. with the intent to promote the carrying on or specified unlawful activity; or

B. knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part --

(a) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(b) to avoid a transaction reporting

requirement under State or Federal law,

shall be sentenced to a fine or not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true."

**18 U.S.C. §1956(c)(4)**:

"the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the

movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree,"

**18 U.S.C. §1956(h):**

"Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."